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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,908	08/07/2003	Reinier Lh Bolhuis	2923-552	7844

6449 7590 08/22/2007  
ROTHWELL, FIGG, ERNST & MANBECK, P.C.  
1425 K STREET, N.W.  
SUITE 800  
WASHINGTON, DC 20005

EXAMINER
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TUNGATURTHI, PARITHOSH K

ART UNIT	PAPER NUMBER
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1643

NOTIFICATION DATE	DELIVERY MODE
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08/22/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/635,908	<b>Applicant(s)</b> BOLHUIS ET AL.	
	<b>Examiner</b> Parithosh K. Tungaturthi	<b>Art Unit</b> 1643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/29/2007 has been entered.
2. Claims 1-11 are pending and under examination.

***Rejections Maintained***

3. Claims 1-11 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Oosterwijk et al (a) (WO 88/08854, Published 11/17/1988) as evidenced by the specification in view of Oosterwijk et al (b) (Seminars in Oncology. 1995. 22(1): 34-41) in view of Robinson et al (U.S. Patent 5,618,920; Issued 4/8/1997) and in view of Queen et al (U.S. Patent 5,530,101; Issued 6/25/1996). These references are cited in PTO-892 mailed on 06/20/2006.

The applicants submitted 132 Declarations by Reinder LH Bolhuis, Egbert Oosterwijk and Sven Warnaar indicating that there was never any public deposition of the G250 hybridoma cells of Weitjens et al and Oosterwijk et al; and that because the use of hybridoma cells was restricted, one of skill in the art would not have been able to

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create hybridoma cell producing G250 monoclonal antibody ... G250 hybridoma cells of the present invention were anything but "publicly available".

The above arguments are carefully considered but are not persuasive. It is noted that the 132 Declarations indicate that the G250 hybridoma cells were not publicly available; however, the prior art indicates otherwise.

For example, Loh et al (The Journal of Nuclear Medicine, 1998. 39:484-489) teach G250 antibody (Materials and Methods, page 485, in particular).

Further, Ritter et al (PGPUB 20030040027) teach a G250 antibody that was purchased (Paragraph 12, Example 1 in particular).

It is noted that none of the authors in these publications are from the three members that submitted the 132 Declarations in the instant case. Hence, in view of the above-cited references and the statements made in the submitted Declarations it is unclear what restriction were placed on the G250 antibody and hybridoma. The submitted Declarations do not address the agreements under which the G250 antibody and hybridoma were provided, whether any restrictions were made and whether or not the G250 antibody and hybridoma were provided under a secrecy or confidentiality agreement. Further, the relationship between the authors of the above references and the inventors of the present application and the Declarations is unclear based on the present record. Each of the above references provides evidence that the G250 antibody and hybridoma were available and Ritter et al indicates that the G250 antibody was on sale. In view of the newly cited evidence, the G250 antibody is believed to be publicly available at the time of filing.

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MPEP 2404.01:

There are many factors that may be used as indicia that a biological material is known and readily available to the public. Relevant factors include commercial availability, references to the biological material in printed publications, declarations of accessibility by those working in the field, evidence of predictable isolation techniques, or an existing deposit made in accordance with these rules.

Hence, claims 1-11 remain rejected.

4. Claims 1-11 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Weijtens et al (The Journal of Immunology, 157:836-843, 1996) as evidenced by the specification in view of Oosterwijk et al (b) (Seminars in Oncology, 1995, 22(1): 34-41) in view of Orlandi et al (Proc. Natl. Acad. Sci. USA, 86:3833-3837, 1989) in view of Cabilly et al (U.S. Patent 4816567, Issued 3/89) in view of Robinson et al (U.S. Patent 5618920, Filed 4/94) in view of Huston et al (U.S. Patent 5258498, Issued 11/93) and in view of Queen et al (U.S. Patent 5,530,101; Issued 6/25/1996). These references are cited partly in PTO-892 mailed on 06/20/2006 and partly in PTO-892 mailed on 02/26/2007.

Please see the response to arguments in paragraph 3 above.

### **Conclusion**

5. No claims are allowed

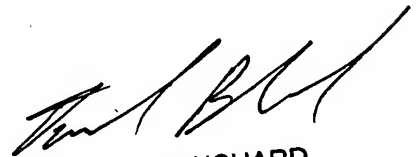
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Parithosh K. Tungaturthi whose telephone number is 571-272-8789. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry R. Helms, Ph.D. can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully,  
Parithosh K. Tungaturthi  
Ph: (571) 272-8789



DAVID J. BLANCHARD  
PATENT EXAMINER  
PRIMARY